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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,754	11/29/2001	Timothy L. Daugherty	MAY006-061	2038

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EXAMINER
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MOORE, MARGARET G

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 09/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/995,754

Applicant(s)

DAUGHERTY, TIMOTHY L.

Examiner

Margaret G. Moore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 to 15, 17 to 29, 43 to 51, 53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 to 7, 9, 15, 18, 29, 43 to 46 and 48 is/are allowed.
- 6) ☒ Claim(s) 1 to 3, 8, 10 to 14, 17, 19 to 28, 47, 49 to 51, 53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

1. Applicants' amendment filed June 24, 2004, has been entered. Unfortunately, upon a review of the claims the Examiner noticed various grounds of rejection that were not made in the previous office action. She apologizes for this unintentional oversight and delay in prosecution. Applicants' remarks overcome the rejections under 35 USC 112 made in paragraphs 3 and 4 of the previous office action.

2. Claims 4 to 7, 9, 15, 43 to 46 and 48 are allowed. The prior art fails to teach or suggest a composition as claimed, wherein the pigmenting component is a solution of spinel in an aqueous acid. Claims 18 and 29 are allowed. The prior art fails to teach or suggest a composition wherein the hardening agent is a finely powdered material having the formula  $\text{SiC}$ .

3. Claim 2 is objected to because of the following informalities: the Mn is contained in parenthesis. This was noted in the previous office action and applicants' indicated in their response that this was corrected, but it was not. Note that the claim identifier for claim 2 in the amended is "original"; no amendment has been made. Appropriate correction is required.

4. Claims 1 to 3, 8, 10 to 14, 17, 19 to 28, 47, 49, 51 and 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 51:

The limitation "1:1 ratio" is indefinite because it is unclear what type of ratio this is. For instance, this could refer to weight, volume or molar ratio and each ratio would correspond to a different amount. As such, this limitation is indefinite.

Claims 8 and 47:

The limitation "25-75 % spinel and 25-75% acid" is indefinite because it is unclear what type of percentage this intends. As noted supra, it could be weight %, molar % or volume %. In lack of any clarification, this limitation is indefinite.

Claims 10 and 49:

The limitation "2-10%" is indefinite for reasons consistent with that noted supra.

Claims 14 and 27:

The ratio "of between 30:70 and 70:30" is indefinite for reasons consistent with that noted supra.

Claim 21:

The breadth of this claim is somewhat confusing. That is, while the coating composition is a liquid at room temperature, it could not function properly as a coating for a cooking appliance in liquid form. It appears that applicants intend for the coating to be formed from a composition that is liquid at room temperature (similar to the language used in claims 29 and 43). As presently claimed it is unclear if the oven is actually coated with a liquid or a hardened composition.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 21, 24, 26, 27, 50 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Decker et al.

The teachings of Decker et al. were detailed in paragraphs 10 and 11 of the previous office action. Regarding the obviousness of the cooking appliance and the methyl to phenyl ratio, the Examiner relies on the rationale of record. Applicants have amended claim 21 and 50 such that the coating composition includes an organic solvent.

With regards to claim 50, the Examiner notes that this is a product by process type claim, in that the coating composition is *formed from* the composition containing an organic solvent. The final coating, however, does not include a solvent. That is, a cooking appliance (which is clearly suggested by Decker et al.) within the breadth of claim 50 requires only a coating that once included a solvent, but which is no longer required. As such it appears that the coating required in claim 50 would inherently be


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the same as the coating prepared by Decker et al., since the binder component, the spinel and the hardening component required in the claimed coating composition, are each present in the coating composition of Decker et al.

As noted supra, it is unclear if the coating composition in the cooking appliance of claim 21 is liquid in the final product, i.e. in the final cooking appliance. However, in view of the fact that it would make no practical sense to have a cooking appliance with a liquid coating, the Examiner will assume, for prior art purposes, that the coating composition is formed from a composition that is liquid at room temperature but that is no longer a liquid. In this manner, the same rationale applied to claim 50, supra, applies. That is, it appears that the final coating on the cooking appliance claimed would inherently be the same as that formed in Decker et al., even though Decker et al. is formed from a powder coating composition.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret G. Moore whose telephone number is 571-272-1090. The examiner can normally be reached on Monday to Wednesday and Friday, 10am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Margaret G. Moore  
Primary Examiner  
Art Unit 1712

mgm  
9/15/04